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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

First Named Inventor: Ivan ALFERIEV

Application Serial No: 10/672,225

Group Art Unit: 1641

Filed: 09/26/2003

Examiner: David J. Venci

Att. Docket No.: T1118-20074

Confirmation No.: 2873

For: METHOD OF DETERMINING SURFACE BINDING CAPACITY

PETITION UNDER 37 C.F.R. § 1.78 (a)(3) FOR ACCEPTANCE OF
AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35
U.S.C. §120Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby petitions the Office to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of a prior-filed application, U.S. Application Serial No. 10/170,411 ("the '411 Application") to Levy et al., filed on June 14, 2002, which claims the benefit of U.S. Provisional Application Serial No. 60/298,116 filed on June 15, 2001.

Claiming the benefit of the '411 Application is proper and is in accordance with 37 CFR §1.78 (a)(1) and 37 CFR §1.53 (b)(1), because both applications have at least one common inventor (e.g., Robert Levy), common subject matter (e.g., Fig. 10, paragraphs [0081] and [0082] in the '411 Application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of U.S.C. §112. Both applications are pending.

The reference for claiming the benefit of a prior-filed application is presented after the time period provided by 37 CFR 1.78 (a)(2)(ii) and is accompanied by:

- (i) a copy of an amendment including a reference to the prior-filed application filed on even date herewith; and
- (ii) the surcharge set forth in § 1.17(t).

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Application No. 10/672,225
Petition Dated 11/2/2005
Page-2

Applicants respectfully assert that the entire delay between the date the claim was due under 37 CFR 1.78 (a)(2)(ii) and the date the claim was filed was unintentional.

Both U.S. Application Serial No. 10/170,411 to Levy et al. of June 14, 2002 and the provisional Application Serial No. 60/413,460 of September 26, 2002 were filed by Foley and Lardner of Washington, DC. Both applications were transferred to Caesar Rivise et al., the current counsel for the Children Hospital of Philadelphia (CHOP), on May 15, 2003. Next, the non-provisional application claiming the benefit of the provisional Application Serial No. 60/413,460 was filed on September 26, 2003.

The relationship of the subject matter of both applications first came to the attention of the undersigned last week while reviewing the '411 Application, which was prepared and filed by previous counsel for CHOP, in preparation for responding to the Office Action.

Accordingly, it is respectfully requested that this Petition be granted, the delay for claiming the benefit be excused and the claim of benefit be added.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

November 2, 2005

By Marina E Volin

Marina E Volin
Registration No. 52,328
Customer No. 03000
(215) 567-2010
Attorneys for Applicants

Please charge or credit our
Account No. 03-0075 as necessary
to effect entry and/or ensure
consideration of this submission.